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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALTON B. HORNBACK, Plaintiff, v. UNITED STATES OF AMERICA, Defendants.	Civil Case No. 08 CV 0127-WQH-BLM DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS Date: June 9 , 2008 Time: 11:00 a.m. Crtrm: 4 Judge: Hon. William T. Hayes [No Oral Argument Unless Requested by the Court]

Please take notice that on or as soon thereafter as counsel may be heard, in the courtroom of the Honorable William T. Hayes, Defendant the United States of America, through its attorneys of record, Karen P. Hewitt, United States Attorney, and Steve B. Chu, Assistant U.S. Attorney, will bring on its motion to dismiss the instant complaint pursuant to Federal Rules of Civil Procedure ("F.R.C.P.") 12(b)(1) and 12(b)(6). Counsel need not appear for oral argument unless requested by the court.

This motion to dismiss is based on the grounds that the Court lacks subject matter jurisdiction to decide Plaintiff's petition for Mandamus, and Plaintiff's petition for Mandamus is not the proper avenue through which to seek the type of relief requested in this action.

This motion is based on this Notice, the accompanying Memorandum of Points and Authorities, the Declaration of Steve B. Chu, the exhibits filed herein, Plaintiff's Complaint, the Court's files and records in this and pending related actions, and any other matter the Court may consider.

DATE: May 5, 2008

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